

## 1 SENATE BILL NO. 83

2 INTRODUCED BY T. SCHMIDT

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE ROLE OF THE CHILD AND FAMILY SERVICES  
6 DIVISION WHEN A NONCUSTODIAL PARENT MAY BE CONSIDERED FOR CUSTODY OF A YOUTH IN  
7 NEED OF CARE; AND AMENDING SECTIONS 41-3-438, 41-3-442, AND 41-3-445, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 41-3-438, MCA, is amended to read:

12 **"41-3-438. Disposition -- hearing -- order.** (1) Unless a petition is dismissed or unless otherwise  
13 stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on  
14 every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437.  
15 Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable  
16 delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

17 (2) (a) A dispositional order must be made after a dispositional hearing that is separate from the  
18 adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional  
19 issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the  
20 dispositional hearing.

21 (b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after  
22 the adjudicatory phase of the proceedings if:

23 (i) all required reports are available and have been received by all parties or their attorneys at least 5  
24 working days in advance of the hearing; and

25 (ii) the judge has an opportunity to review the reports after the adjudication.

26 (c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

27 (3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment,  
28 making any of the following dispositions to protect the welfare of the child:

29 (a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions  
30 and limitations the court may prescribe;

- 1           **(b)** order the department to evaluate the noncustodial parent as a possible caretaker;
- 2           **(c)** order the temporary placement of the child with the noncustodial parent, superseding any existing
- 3 custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan
- 4 ordered pursuant to 41-3-443;
- 5           **(b)(d)** order the placement of the child with the noncustodial parent, superseding any existing custodial
- 6 order, and dismiss the proceeding with no further obligation on the part of the department to provide services to
- 7 the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian
- 8 from whom the child was removed in the initial proceeding;
- 9           **(c)(e)** grant an order of limited emancipation to a child who is 16 years of age or older, as provided in
- 10 41-1-501;
- 11           **(d)(f)** transfer temporary legal custody to any of the following:
- 12           (i) the department;
- 13           (ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care,
- 14 and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of
- 15 the child; or
- 16           (iii) a nonparent relative or other individual who has been evaluated by the department, is AND
- 17 recommended by the department or a licensed child-placing agency designated by the court, ~~and who~~ WHO is
- 18 found by the court to be qualified to receive and care for the child;
- 19           **(e)(g)** order a party to the action to do what is necessary to give effect to the final disposition, including
- 20 undertaking medical and psychological evaluations, treatment, and counseling that does not require an
- 21 expenditure of money by the department unless the department consents and informs the court that resources
- 22 are available for payment. The department is the payor of last resort after all family, insurance, and other
- 23 resources have been examined.
- 24           **(f)(h)** order further care and treatment as the court considers in the best interests of the child that does
- 25 not require an expenditure of money by the department unless the department consents and informs the court
- 26 that resources are available for the proposed care and treatment. The department is the payor of last resort after
- 27 all family, insurance, and other resources have been examined pursuant to 41-3-446.
- 28           (4) (a) If the court awards temporary legal custody of an abandoned child other than to the department
- 29 or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's
- 30 extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

1 (i) placement of the abandoned child with the extended family member is in the best interests of the child;  
2 (ii) the extended family member requests that the child be placed with the family member; and  
3 (iii) the extended family member is found by the court to be qualified to receive and care for the child.

4 (b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court  
5 may award custody to the extended family member who can best meet the child's needs.

6 (c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent,  
7 aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate  
8 and determine if awarding custody to the family member is in the best interests of the child. The department shall  
9 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,  
10 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws  
11 allow. The court shall include the reasons for denial in the court order if the family member who is denied  
12 temporary legal custody requests it to be included.

13 (5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child  
14 to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency  
15 for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance  
16 with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the  
17 child.

18 (6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5)  
19 of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts  
20 must be made to place the child in a timely manner in accordance with the permanency plan and to complete  
21 whatever steps are necessary to finalize the permanent placement of the child.

22 (7) If the time limitations of this section are not met, the court shall review the reasons for the failure and  
23 order an appropriate remedy that considers the best interests of the child."  
24

25 **Section 2.** Section 41-3-442, MCA, is amended to read:

26 **"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under  
27 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a  
28 preponderance of the evidence that:

29 (a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment  
30 to the child's physical or psychological well-being; and

1 (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable  
 2 services have been provided to the parent or guardian to prevent the removal of the child from the home or to  
 3 make it possible for the child to safely return home.

4 (2) An order for temporary legal custody may be in effect for no longer than 6 months.

5 (3) The granting of temporary legal custody to the department allows the department to place a child in  
 6 care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home,  
 7 youth shelter care facility, or institution.

8 (4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney  
 9 general, or an attorney hired by the county shall petition for one of the following:

10 (a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

11 (i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

12 (ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

13 (b) continued temporary placement of the child with the noncustodial parent, superseding any existing  
 14 custodial order;

15 ~~(b)(c)~~ termination of the parent-child legal relationship and either:

16 (i) permanent legal custody with the right of adoption; or

17 (ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial  
 18 order; or

19 ~~(ii)(iii)~~ appointment of a guardian pursuant to 41-3-607;

20 ~~(c)(d)~~ long-term custody when the child is in a planned permanent living arrangement pursuant to  
 21 41-3-445;

22 ~~(d)(e)~~ appointment of a guardian pursuant to 41-3-444; or

23 ~~(e)(f)~~ dismissal.

24 (5) The court may continue an order for temporary legal custody pending a hearing on a petition provided  
 25 for in subsection (2).

26 (6) If an extension of temporary legal custody is granted to the department, the court shall state the  
 27 reasons why the child was not returned home and the conditions upon which the child may be returned home and  
 28 shall specifically find that an extension is in the child's best interests.

29 (7) If the time limitations of this section are not met, the court shall review the reasons for the failure and  
 30 order an appropriate remedy that considers the best interests of the child.

1 (8) In implementing the policy of this section, the child's health and safety are of paramount concern.

2 (9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

3

4 **Section 3.** Section 41-3-445, MCA, is amended to read:

5 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must  
6 be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding,  
7 by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in  
8 41-3-1010:

9 (A) within 30 days of a determination that reasonable efforts to provide preservation or reunification  
10 services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

11 (B) no later than 12 months after the initial court finding that the child has been subjected to abuse or  
12 neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

13 (ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the  
14 child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved  
15 entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether  
16 the department has made reasonable efforts to finalize the permanency plan for the child.

17 (b) A permanency hearing is not required if the proceeding has been dismissed, the child was not  
18 removed from the home, the child has been returned to the child's parent or guardian, or the child has been  
19 legally adopted or appointed a legal guardian.

20 (c) The permanency hearing may be combined with a hearing that is required in other sections of this  
21 part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a  
22 permanency hearing is combined with another hearing or a review, the requirements of the court related to the  
23 disposition of the other hearing or review must be met in addition to the requirements of this section.

24 (d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate  
25 reviews for groups of siblings, but the court shall issue specific findings for each child.

26 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report  
27 regarding the child to the entity that will be conducting the hearing for review. The report must address the  
28 department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent  
29 placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry  
30 out the placement decision, including specific times for achieving the plan.

1 (3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or  
2 advocate for a parent or guardian may submit an informational report to the entity that will be conducting the  
3 hearing for review.

4 (4) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was  
5 conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent,  
6 great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior  
7 grant of temporary custody with that family member be made permanent, the department shall investigate and  
8 determine if awarding custody to that family member is in the best interests of the child. The department shall  
9 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,  
10 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws  
11 allow. The court shall include the reasons for denial in the court order if the family member who is denied custody  
12 requests it to be included.

13 (b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and  
14 the minutes and written recommendations must be provided to the court within 20 days of the hearing.

15 (c) If an entity other than the court conducts the hearing and the court concurs with the  
16 recommendations, the court may adopt the recommendations as findings with no additional hearing required. In  
17 this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

18 (5) The court shall approve a specific permanency plan for the child and make written findings on:

19 (a) whether the permanency plan is in the best interests of the child;

20 (b) whether the department has made reasonable efforts to finalize the plan; and

21 (c) other necessary steps that the department is required to take to effectuate the terms of the plan.

22 (6) In its discretion, the court may enter any other order that it determines to be in the best interests of  
23 the child that does not conflict with the options provided in subsection (7) and that does not require an  
24 expenditure of money by the department unless the court finds after notice and a hearing that the expenditures  
25 are reasonable and that resources are available for payment. The department is the payor of last resort after all  
26 family, insurance, and other resources have been examined.

27 (7) Permanency options include:

28 (a) reunification of the child with the child's parent or guardian;

29 (b) permanent placement of the child with the noncustodial parent, superseding any existing custodial  
30 order;

